

# In The Senate of the United States

## Sitting as a Court of Impeachment

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In re: )  
Impeachment of G. Thomas Porteous, Jr., )  
United States District Judge for the )  
Eastern District of Louisiana )  
\_\_\_\_\_ )

### HOUSE OF REPRESENTATIVES' NOTICE OF INTENT TO INTRODUCE AT TRIAL JUDGE PORTEOUS'S TESTIMONY BEFORE THE FIFTH CIRCUIT SPECIAL COMMITTEE

Pursuant to the Senate Impeachment Trial Committee's Scheduling Order of June 21, 2010, the House of Representatives (the "House"), through its Managers and counsel, respectfully provides notice to the Senate Impeachment Trial Committee and to Judge Porteous that it will introduce as evidence Judge Porteous's immunized testimony that he provided under oath before the Fifth Circuit Special Committee on October 30, 2007.<sup>1</sup> In support of this notice, the House respectfully submits:

On October 29, 2007, Judge Porteous testified under oath before the Fifth Circuit Special Investigatory Committee that was hearing evidence related to his possible judicial misconduct, for purposes of determining whether Judge Porteous should be disciplined and/or whether other official actions – such as referring Judge Porteous for possible impeachment – was warranted. In connection with that hearing, Judge Porteous was

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<sup>1</sup>This Notice is filed separately from the House of Representatives' Motion to Admit Transcripts and Records from Prior Judicial and Congressional Proceedings, because the use of prior sworn testimony of third party witnesses presents different issues that the introduction into evidence of Judge Porteous's own prior sworn statements.

provided a standard compulsion order, signed by Chief Judge Edith H. Jones of the United States Court of Appeals for the Fifth Circuit. That Order stated that it was hereby:

ORDERED, in compliance with 18 U.S.C. §§ 6002-6003 and pursuant to 28 U.S.C. § 353, that the witness, the Honorable G. Thomas Porteous, Jr., shall provide testimony and other information as to all matters about which he may be interrogated in a proceeding before or ancillary to the United States Court of Appeals for the Fifth Circuit; and that no testimony or other information that he provides under this order and no information directly or indirectly derived from such testimony or other information shall be used against him in any criminal case, except in a prosecution for perjury, making a false statement, or failure to comply with this order.<sup>2</sup>

Because the Impeachment proceeding is not a “criminal case” – the only proceeding in which Judge Porteous’s immunized testimony may not be used against him – the Immunity Order does not preclude the use of Judge Porteous’s immunized Fifth Circuit testimony in the Impeachment trial. As this Senate Trial Committee has noted, in a “Disposition” signed by all twelve Senators on the Committee, “the impeachment proceeding is independent of, and not akin to, a civil or criminal proceeding.”<sup>3</sup>

In his testimony, Judge Porteous made numerous statements that are relevant to the Articles I, III and IV of the Articles of Impeachment. For example, he admitted receiving cash from attorneys Creely and Amato:

Q. When did you first start getting cash from Messrs. Amato, Creely, or their law firm?

A. Probably when I was on state bench.

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<sup>2</sup>Order, In Re Matters Involving U.S. District Judge G. Thomas Porteous, Jr., Dckt. No. 07-05-351-0085 (emphasis added). That Order, as well as the various application materials, is attached as “Attachment 1.”

<sup>3</sup> Disposition of G. Thomas Porteous, Jr.s Motion for Continuance” (June 21, 2010).

Q. And that practice continued into 1994, when you became a federal judge, did it not?

A. I believe that's correct.<sup>4</sup>

Judge Porteous also admitted that these transactions "occasionally" followed his assignment of curatorships to Creely, though he claimed that these transactions were not linked:

Q. Just talking about Creely and Amato and their law firm right now. You would occasionally, after sending them curatorships – and for the record, what is a – how would you describe a curatorship?

A. [Porteous] It's for an absent defendant. It could be in a variety of situations. ...

Q. And after receiving curatorships, Mr. – Messrs. Creely and/or Amato and/or their law firm would give you money, correct?

A. Occasionally.

\* \* \*

Q. [Judge Benavides]: ... [T]here is testimony before the grand jury that there was a return in the exact same amount, minus expenses,

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<sup>4</sup>Porteous Fifth Circuit Hearing Testimony (hereinafter "Fifth Cir. Hrg.") at 119. Judge Porteous's testimony was made "HP Exhibit 10" on the House's Exhibit list. A copy of the testimony, along with the preceding colloquy, is attached at "Attachment 2." Judge Porteous also made statements in his questioning of witnesses that are functionally admissions. For example, he asked Attorney Amato why Amato gave him money:

Q. [Porteous]: [J]ust so I'm clear, this money that was given to me, was it done because I'm a judge, to influence me, or just because we're friends?

A. [Amato]: Tom, it's because we were friends and we've been friends for 35 years. And it breaks my heart to be here.

See Amato Fifth Cir. Hrg. at 258-59 (HP Ex. 20). Judge Porteous is well aware of the significance of this testimony, and had sought, by filing an action in the United States District Court, to preclude the House from using it. Judge Porteous's determined efforts to deprive Congress of this critical evidence is described in the Judiciary Committee Report that accompanied the Articles of Impeachment at pages 10-11.

of the curatorship that was returned to you, according to one of the witnesses.

A. That's apparently what it says, I agree.

Q. Is that true or not?

A. Not – to the best of my knowledge, that is not correct.

\* \* \*

Q. [So] if it matched the expense – the amount each time –

A. I don't –

Q. Except for expenses, that would be a coincidence?

A. I don't know if it matched each time. That's all I can tell you, Judge. I don't know.<sup>5</sup>

Judge Porteous further testified that he received an envelope containing approximately \$2,000 in cash from Attorney Amato when the Liljeberg case was pending:

Q. [W]hether or not you recall asking Mr. Amato for money during this fishing trip, do you recall getting an envelope with \$2,000 shortly thereafter?

A. Yeah. Something seems to suggest that there may have been an envelope. I don't remember the size of an envelope, how I got the envelope, or anything about it.

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Q. [Judge Lake]: Wait a second. Is it the nature of the envelope you're disputing?

A. No. Money was received in [an] envelope.

Q. And had cash in it?

A. Yes, sir.

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<sup>5</sup>Porteous Fifth Cir. Hrg. at 130-33 (emphasis added).

Q. And it was from Creely and/or --

A. Amato.

Q. Amato?

A. Yes.

Q. And it was used to pay for your son's wedding.

A. To help defray the cost, yeah.

Q. And was used --

A. They loaned -- my impression was it was a loan.

Q. And would you dispute that the amount was \$2,000?

A. I don't have any basis to dispute it.<sup>6</sup>

Judge Porteous made numerous other statements that are highly probative to Article III (bankruptcy) as well.<sup>7</sup>

Not only is there no legal impediment exists to the House's use of this highly relevant evidence, it would constitute a miscarriage of the fact-finding process if the Senate were to be kept in the dark about Judge Porteous's own statements concerning the conduct at issue. For example, only Judge Porteous and Mr. Amato have first-hand knowledge of the money that Mr. Amato gave Judge Porteous when the Liljeberg case was pending, and, presumably, if Judge Porteous's testimony were not admitted, he would be free to claim the event never happened (or cannot be proven), even though he admitted that conduct under oath. Though the Federal Rules of Evidence do not pertain

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<sup>6</sup>Porteous Fifth Cir. Hrg. at 136-37 (Ex. 10).

<sup>7</sup>The House is willing to designate the entirety of Judge Porteous's testimony for admission to avoid any claim that it is picking and choosing testimony out of context.

to Impeachment proceedings, we note that prior testimony of a party would be admissible in any Federal trial.<sup>8</sup>

Finally, the introduction of Judge Porteous's prior testimony is consistent with Senate Impeachment precedent. In the Claiborne Impeachment, the House moved the Senate to "accept prior admissions of Judge Claiborne as substantive evidence."<sup>9</sup> The Claiborne Impeachment Committee granted the motion, and Judge Claiborne's prior testimony was in fact admitted in the impeachment trial.<sup>10</sup>

WHEREFORE, the House provides notice of its intent to introduce Judge Porteous's Fifth Circuit Hearing testimony.

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<sup>8</sup>See Federal Rules of Evidence 801(d)(2) (a statement does not constitute excludable hearsay if "[t]he statement is offered against a party and is (A) the party's own statement....").

<sup>9</sup>See [The House of Representatives'] Motion to Accept Prior Admissions of Judge Claiborne as Substantive Evidence, In re: Impeachment of Judge Harry E. Claiborne, reprinted in Report of the Senate Impeachment Trial Committee, Hearings before the Senate Impeachment Trial Committee, United States Senate, S. Hrg. 99-812, 99th Cong., 2d Sess. (1986) at 389 [hereinafter "Judge Claiborne Senate Impeachment Report"].

<sup>10</sup>Proceedings of the Claiborne Impeachment Trial Committee, Sept. 10, 1986, printed in Judge Claiborne Senate Impeachment Report at 110 (statement of Sen. Mathias). The Motion was granted in a summary fashion. Judge Claiborne was permitted leave to raise particular objections to testimony that the House sought to use, though it does not appear that he in fact made any. At trial, when the House Managers sought to introduce Judge Claiborne's testimony, Judge Claiborne's counsel stated: "Mr. Chairman, it is our understanding that the ruling has already been made and that the statements attributed to Judge Claiborne are in fact admissible." Proceedings of the Claiborne Impeachment Trial Committee, Sept. 16, 1986, printed in Judge Claiborne Senate Impeachment Report at 622 (statement of Oscar Goodman, Esq.).

Respectfully submitted,

THE UNITED STATES HOUSE OF REPRESENTATIVES

A handwritten signature in black ink, appearing to read "Adam Schiff".

Adam Schiff, Manager

By

A handwritten signature in black ink, appearing to read "Bob Goodlatte".

Bob Goodlatte, Manager

A handwritten signature in black ink, appearing to read "Alan I. Baron".

Alan I. Baron  
Special Impeachment Counsel

Managers of the House of Representatives: Adam B. Schiff, Bob Goodlatte, Zoe Lofgren, Henry C. "Hank" Johnson, F. James Sensenbrenner, Jr.

July 21, 2010